

PT 99-49

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

NEW HOPE CHURCH OF DELIVERANCE)

Applicant)

v.)

**THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)**

Docket # 96-72-37

Parcel Index # 18-05-406-008

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Donald R. Jackson appeared on behalf of the New Hope Church of Deliverance.

Synopsis:

The hearing in this matter was held on March 10, 1999, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not Peoria County Parcel Index No. 18-05-406-008 and the house located thereon qualified for exemption from real estate taxation for the 1996 assessment year.

Mr. Gregory McNeary, a member of the Pastor's Aid Committee of the New Hope Church of Deliverance (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, whether the applicant owned this parcel during the 1996 assessment year; and lastly, whether the applicant used this parcel and the residence thereon for religious or charitable purposes during the 1996 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned this parcel and the residence thereon during the 1996 assessment year. Finally, it is determined that the applicant failed to establish that it used this parcel and the residence thereon for either religious or charitable purposes during the 1996 assessment year.

It is therefore determined that Peoria County Parcel Index No. 18-05-406-008 remain on the tax rolls for the 1996 assessment year and be assessed to the applicant the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6B.

2. On June 17, 1996, the Peoria County Board of Review transmitted to the Department an Application for Property Tax Exemption to Board of Review concerning the parcel here in issue for the 1996 assessment year. (Dept. Ex. No. 2)

3. On August 20, 1998, the Department advised the applicant that it was denying the exemption of this parcel because said parcel was not in exempt use. (Dept. Ex. No. 3)

4. On March 4, 1997, Ms. Valerie Washington, the administrator of the applicant requested a formal hearing in this matter. (Dept. Ex. No.4)

5. The hearing in this matter conducted on March 10, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired Peoria County Parcel Index No. 18-05-406-008 by a warranty deed dated March 22, 1993. The common address of this parcel and the residence located thereon is 1027 North Bourland Avenue, Peoria, Illinois. (Dept. Ex. No. 2B)

7. The parcel here in question is located approximately one mile from the applicant's church which is located at 3616 North Sheridan Road in Peoria. (Tr. p. 15)

8. During 1996 the applicant had an outreach program. When persons are in crisis the applicant attempts to assist them with their needs, including food, transportation, and a place to live. (Tr. pp. 7 & 8)

9. During 1996 the parcel here in issue and the house thereon were occupied by the Ricky Walker family. This family consisted of Ricky Walker, his wife and four daughters. They lived in the house on this parcel during the entire 1996 assessment year. They did not pay rent while living in this house. (Dept. Ex. No. 2F, Appl. Ex. No. 1, Tr. pp. 10, 11, & 16)

10. During 1996 this parcel and the house thereon were zoned as a single-family residence so the applicant used the property as a single-family residence for the Walker family. (Dept. Ex. No. 2F)

11. Ricky Walker had been a pastor of a church affiliated with the applicant before he and his family moved to Peoria. Although Mr. McNeary, the applicant's witness, gave several conflicting answers he finally concluded that Mr. Walker was not employed by the applicant during 1996. (Tr. pp. 17 & 18)

12. Ricky Walker and his family were members of the applicant's church during 1996. (Dept. Ex. 2F)

13. While Mr. McNeary testified that it was not necessary that a person who received assistance from the applicant's outreach program be a member of the church, Bishop Harold Dawson's affidavit dated January 29, 1997 concerning the parcel here in issue stated as follows:

The property known as P.I.N. # 18-05-406-008 is a house owned by the church, used to house members of our church in need.
(Dept. Ex. 2F)

14. During 1996 the applicant paid the utilities on the house on this parcel. The applicant also provided food to Mr. Walker and his family during 1996. (Tr. pp. 18 & 27)

15. Mr. McNeary testified that he was not aware that Mr. Walker was employed during the time that he and his family lived in the house on this parcel. (Tr. p. 17)

16. During 1996, religious services were held at the sanctuary of the applicant at 3616 Sheridan in Peoria on Sunday mornings at 11:00 A.M., on Tuesday evenings at 7:30 P.M. and also on Friday evenings at 7:30 P.M. (Tr. p. 21)

17. During 1996, there were approximately 250 members of the applicant and the average attendance at the Sunday morning worship service was approximately 300. (Tr. pp. 20 & 21)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their

vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof is on the applicant in this matter.

Based on the foregoing findings of fact I conclude that the applicant is a religious organization. I also conclude that the applicant owned this parcel and the residence thereon during the entire 1996 assessment year.

In the case of McKenzie v. Johnson, 98 Ill.2d 87 (1988), the Illinois Supreme Court first set forth that the so-called parsonage exemption was constitutional. The Court then went on to state that a parsonage qualifies for an exemption if it reasonably and substantially facilitates the aims of religious worship or instruction or is used for such purposes. In this case the parcel here in issue and the residence thereon is approximately one mile from the applicant's church. In

addition no evidence or testimony was offered by the applicant that this parcel and residence reasonably and substantially facilitated the aims of religious worship or instruction or was used for such purposes during 1996. *See also Evangelical Alliance Mission v. Department of Revenue*, 164 Ill.App.3d 431 (1987). It should also be pointed out that while Ricky Walker had previously been a pastor at a church affiliated with the applicant the testimony in this case clearly showed that Mr. Walker was not employed by the applicant during 1996.

I therefore conclude that the applicant has failed to establish that it used Peoria County Parcel Index No. 18-05-406-008 and the residence thereon for religious or parsonage purposes during 1996.

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

It should be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. *Fairview Haven v. Department of Revenue*, 153 Ill. App. 3d 763 (4th Dist. 1987); and *Christian Action Ministry v. Department of Local Government Affairs*, 74 Ill.2d 51 (1978).

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way

of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. In view of Bishop Harold Dawson's statement in his affidavit that this parcel is used to house church members, I conclude that the benefits derived concerning this parcel and the residence thereon are limited to a specific group of persons, namely members of the applicant, rather than an indefinite number of persons. Again, in view of the fact that the use of this parcel was limited to members of the applicant during 1996, charity was not dispensed to all who needed and applied for it, and an obstacle, namely church membership was placed in the way of those seeking the benefits.

I therefore conclude that the applicant has failed to establish that it used Peoria County Parcel Index No. 18-05-406-008 and the residence thereon for charitable purposes during 1996.

Consequently, I recommend that Peoria County Parcel Index No. 18-05-406-008 remain on the tax rolls for the 1996 assessment year. I also recommend that said parcel be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
July 2, 1999